

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109

COMMENTS OF iBASIS RETAIL, INC.

iBasis Retail, Inc. (“iBasis”), by and through counsel, submits these comments in response to the Federal Communications Commission’s (the “Commission’s”) August 3, 2011 *Further Public Notice*¹ seeking comment on various aspects of the price cap carriers’ America’s Broadband Connectivity Plan (“*ABC Plan*”).² These comments focus on the need to address originating access services as part of the Commission’s comprehensive reform of intercarrier compensation. For the reasons set forth below,

¹ Further Inquiry Into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding, *Public Notice*, DA 11-1347 (rel. Aug. 3, 2011) (“*Further Public Notice*”).

² Letter from Robert W. Quinn Jr., AT&T, Steve Davis, CenturyLink, Michael Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon and Michael D. Rhoda, Windstream, to Marlene H. Dortch, FCC, WD Docket No. 10-90 et al. (filed July 29, 2011) (“*ABC Plan*”).

iBasis urges the Commission to eliminate originating access charges following the same transition period adopted for terminating access.

I. The Commission Should Eliminate Originating Access Charges

Originating access rates are of particular concern to prepaid calling card providers like iBasis. As noted in the Prepaid Card Provider Comments in this proceeding, AT&T has sued or threatened to sue virtually the entire prepaid calling card industry seeking originating access charges for prepaid calls carried over competitive local exchange carrier (“CLEC”) DID services.³ For the reasons set forth in those comments, such calls fall within the scope of section 251(b)(5) and thus are not subject to originating access charges, and the Prepaid Calling Card Providers urge the Commission to confirm this point in this proceeding. The Prepaid Calling Card Providers also emphasized the need to establish a uniform rule on a going-forward basis to create certainty in the industry and establish a level playing field among all prepaid card providers. The *ABC Plan*, however, goes in the opposite direction. Rather than unifying intercarrier rates, the *ABC Plan* would preserve originating access rates at current levels and retain the disparity between interstate and intrastate originating access rates.⁴

The *ABC Plan*’s failure to address originating access services in any meaningful way is recognized in the *Further Public Notice*.⁵ Whereas the *ABC Plan* proposes to phase down all terminating per minute charges to a uniform rate of \$0.0007 over a five-year period, originating switched access charges would merely be capped at the interstate

³ Comments of Prepaid Card Providers, WC Docket No. 10-90, *et al.* (filed April 18, 2011) at 11-12.

⁴ *ABC Plan*, Attachment 1, Framework of the Proposal (“*Framework*”) at 11 (stating that carriers may not increase interstate or intrastate originating access rates). Only originating intrastate dedicated transport rates would be transitioned to interstate levels over the first two years. *Id.*

⁵ *Further Public Notice* at 13 (noting that while the *ABC Plan* outline would substantially reform terminating switched access, it takes a “more limited” approach to originating access).

or intrastate rates in effect as of January 1, 2012, implicitly preserving disparate intrastate and interstate rates.⁶ Many LEC tariffs impose identical rates for originating and terminating access and, as reflected the brief sample of local switching rates in the chart below, those rates diverge significantly for interstate and intrastate traffic:

Originating Local Switching Access Rates

	Interstate	Intrastate
SWBT/Oklahoma	\$0.002563	\$0.008222 ⁷
Verizon Pennsylvania	\$0.002406	\$0.006212 ⁸
Windstream Iowa	\$.00051620	\$0.016610 ⁹
Qwest Arizona	\$0.001974	\$0.016270 ¹⁰

By leaving originating switched access charges intact, the *ABC Plan* retains the very type of rate disparity that the Commission appropriately seeks to eliminate and perpetuates the myriad problems identified by the Commission. As the Commission noted in the 2011 NPRM, “[t]he wildly varying and disparate rates within the intercarrier compensation system create arbitrage opportunities and introduce layers of regulatory complexity and associated costs, which hinder the deployment of IP networks.”¹¹ Maintaining the current inefficient access regime for originating traffic preserves the

⁶ *Framework* at 11.

⁷ *See* Southwestern Bell Telephone Company, Tariff FCC No. 73, §6.9.3(A); Southwestern Bell Telephone Company d/b/a AT&T Missouri, PSC Mo. No. 36 Access Services Tariff § 6.11.2 (A).

⁸ *See* Verizon Tariff FCC No. 1, § 6.9.2(A); Verizon Pennsylvania, Inc. PA PUC No. 302, § 6.9.3(A).

⁹ *See* Windstream Telephone System, Tariff FCC No. 6, § 17.2.3(A)(1)(b) (Windstream Iowa Communications #1167/Iowa North); Windstream Iowa Communications, Inc. Iowa No. 2, § 4.6.3 (for Iowa North) (effective January 1, 2011). As of January 1, 2012, when the ABC Plan would freeze originating access rates, Windstream Iowa’s intrastate end office switching rate will be \$0.0150800.

¹⁰ *See* Qwest Corp. Tariff FCC No. 1, § 6.8.2(A)(1); Qwest Corporation d/b/a CenturyLink QC, Arizona Price Cap Access Service Tariff, § 6.8.2(A).

¹¹ Connect American Fund: A National Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 4554 (2011) (“2011 NPRM”) at para. 496.

“perverse incentive” to “maintain and invest in legacy, circuit switch-based, time division multiplexing (TDM) networks” simply to continue collecting access charges.¹²

The price cap carriers proffer no justification for treating originating access service differently than terminating access and their proposal runs counter to Commission precedent. In previous access reform efforts, the Commission has treated originating access and terminating access in the same way. The *CLEC Access Charge Reform Order*, for example, imposed new benchmarks on both originating and terminating access and applied the same transition period to both.¹³ Similarly, states that have reformed intrastate access charges have typically placed originating and terminating access on the same tracks.¹⁴

More recently, the Commission’s 2008 intercarrier compensation reform proposals would have eliminated originating access services following the same

¹² 2011 NPRM at para. 506.

¹³ Reform of Access Charges Imposed by Competitive Local Exchange Carriers, *Seventh Report and Order and Further Notice Of Proposed Rulemaking*, 16 FCC Rcd 9923, para. 56 (2001) (“*CLEC Access Charges Order*”) (“We will apply the benchmark for both originating and terminating access charges. That is, it will apply to tariffs for both categories of service, including toll-free 8YY traffic, and will decline toward the rate of the competing ILEC for each category of service.”).

¹⁴ As examples, the California Public Utilities Commission (“CPUC”) adopted a two-step series of limitations on the intrastate access charges, both originating and terminating, charged by CLECs. First, the CPUC limited charges to \$0.025 per minute, effective April 1, 2008. Second, the CPUC mandated that access charges may not exceed the higher of comparable charges by AT&T or Verizon, plus 10%, effective January 1, 2009. See *Order Instituting Rulemaking to Review Policies Concerning Intrastate Carrier Access Charges*, Cal. Pub. Util. Comm’n. Docket No. R. 03-08-018, Decision No. 07-12-020 (Cal. Pub. Util. Comm’n rel. Dec. 6, 2007), petition for rehearing denied, *Order Instituting Rulemaking to Review Policies Concerning Intrastate Carrier Access Charges*, Order Denying Rehearing of Decision, Cal. Pub. Util. Comm’n. Docket No. R. 03-08-018, Decision No. 08-02-037 (Cal. Pub. Util. Comm’n rel. Feb. 28, 2008). The Virginia Corporation Commission adopted a policy that first implemented an interim state benchmark for all intrastate switched access charges at \$.029 per minute, and upon the expiration of the interim period, prohibited CLEC intrastate access rates from exceeding the higher of the CLEC’s interstate switched access rates or the aggregate intrastate rate of the ILEC providing service in the same area. See *Amendment of Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, Final Order*, Va. Corp. Comm’n. Case No. PUC-2007-00033, Attachment A, at 7 (Va. Corp. Comm’n. rel. Sept. 27, 2007).

transition period proposed for terminating access services.¹⁵ The Commission there correctly concluded that retaining originating access charges in light of the Commission's determination to place all traffic within the ambit of Section 251(b)(5) would be inconsistent with the statutory scheme contemplated by that provision and the Commission's implementing regulations:¹⁶

We note that, in the *Local Competition First Report and Order*, the Commission observed that Section 251(b)(5) does not address charges payable to a carrier that originates traffic and concluded, therefore, that such charges were prohibited under that provision of the Act. Because we elect to have states set rates under Section 251(b)(5), pursuant to our methodology, we find that retention of originating access charges would be inconsistent with that statutory scheme and our new regulatory approach. Accordingly, we find that originating charges for all telecommunications traffic subject to our comprehensive intercarrier compensation framework must be eliminated at the conclusion of the transition to the new regime.¹⁷

The *ABC Plan*, by contrast, calls for folding all traffic under Section 251(b)(5), but would continue to maintain access charges for originating access services. The price cap carriers argue that “[a]ll traffic currently subject to either tariffed access charges or reciprocal compensation charges falls within Section 251(b)(5), because it necessarily involves a LEC on at least one end”¹⁸ and calls on the Commission to exercise its authority under that section to bring all such traffic into the Section 251(b)(5) fold. Despite their recognition that all such traffic falls within Section 251(b)(5), the *ABC Plan* inexplicably proposes to maintain access charges for originating traffic. As the

¹⁵ See Intercarrier Compensation for ISP-Bound Traffic, *Order on Remand and Further Notice of Proposed Rulemaking*, 24 FCC Rcd 6475 (2008) (“2008 ISP Order and USF/ICC FNPRM”), at Appendix A (“Appendix A Proposal”), para. 229, and Appendix C (“Appendix C Proposal”), para. 224.

¹⁶ *Appendix A Proposal*, para. 192, *Appendix C Proposal*, para. 224. The Commission's reciprocal compensation rules bar a carrier from assessing charges for traffic that originates on its network. 47 C.F.R. §51.703(b) (“A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.”).

¹⁷ *Appendix A Proposal*, para. 229; *Appendix C Proposal*, para. 224.

¹⁸ *ABC Plan*, Attachment 5, Legal Authority White Paper, at 1.

Commission recognized in 2008, however, such a dichotomy is not legally sustainable. The Commission should follow the course it set out in 2008 and eliminate all originating access charges, if not immediately, then at the end of the same transition period established for terminating access.

II. Eliminating or Lowering Originating Access Rates Will Lead to Consumer Benefits

The price cap carriers argue that reducing intercarrier compensation to a low, uniform rate will create substantial consumer benefits. The carriers submit a Consumer Benefits Paper authored by Professor Hausman, who concludes that setting a default intercarrier compensation rate for all traffic near zero “would lead to significant gains in consumer welfare, as well as significant efficiency gains for the U.S. economy.”¹⁹ Specifically, Professor Hausman finds that a Commission policy “setting all intercarrier compensation rates near zero would result in a consumer welfare gain of approximately \$9 billion per year.”²⁰ Also, “lower rates for all intercarrier compensation will lead to lower prices for consumers, added investment an[d] innovation, or both.”²¹ These significant consumer benefits accrue because competitive pressure on the beneficiaries of the lower rates will result in a pass through of the savings to customers.

Professor Hausman repeatedly refers to regulatory policy that reduces *all* intercarrier compensation rates. There is no indication that his analysis is limited to terminating rates only. There is certainly no reason to assume that the enormous consumer benefits identified by Professor Hausman would not be equally applicable to reductions in the rates for originating access services. To the contrary, his key

¹⁹ *ABC Plan*, Attachment 4, Professor Hausman Consumer Benefits Paper (“*Hausman Paper*”) at 1.

²⁰ *Hausman Paper* at 2.

²¹ *Hausman Paper* at 8 (emphasis in original).

assumption that savings would be passed through to consumers in competitive markets clearly holds for originating access services.

Prepaid calling card providers are a prime example. The prepaid calling card market is highly competitive and providers readily pass through the savings achieved by utilizing CLEC DID originating services. These savings are reflected in the lower rates for calls using CLEC DID services and the higher rates applicable when utilizing 8YY calling, which is subject to incumbent LEC originating access charges. The elimination of originating access charges, or a reduction toward zero as Professor Hausman assumes, would lead to the widespread availability of lower rates and concomitant consumer benefits.

Moreover, these benefits would accrue to those most in need. Prepaid calling cards are often used by consumers with lower incomes, particularly immigrant populations. Particularly in these very difficult economic times, the affordable alternative provided by prepaid calling cards is critically important to these segments of the population.

CONCLUSION

For the reasons set forth above, iBasis respectfully urges the Commission to eliminate originating access services following the same transition time period established for terminating intercarrier compensation charges.

Respectfully submitted,

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 /s/
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